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April 14, 1989

VIA TELECOPY

Allen Danzig, Esq.
Sherwin - Williams
101 Prospect Avenue N.W.
Cleveland, Ohio 44115

Re: CERCLA, Section 106 Order
Fields Brook Superfund Site,
Ashtabula County, Ohio

Dear Mr. Danzig:

By letter dated March 28, 1989, RMI Company, Gulf + Western Inc., Occidental Chemical Corporation (successor to Diamond Shamrock Chemical Company and Hooker Electrochemical Company), Detrex Corporation and Centerior Energy Corporation (for the Cleveland Electric Illuminating Company)(the "Settling Group") confirmed their collective intent to immediately commence the remedial design and pre-design activities of the Settlement Operable Unit and Source Control Remedial Investigation/Feasibility Study (the "Work") for the Fields Brook Superfund Site, Ashtabula County, Ohio, as required by the 106 Order issued by the U.S. EPA on March 22, 1989. In addition, the Settling Group notified the U.S. EPA that the Settling Group had selected Mr. Joseph T. Holman of Alternative Concepts and Technologies, Inc. to act as their project coordinator and that they had selected Woodward-Clyde Consultants to prepare the work plans and other necessary specifications for performing the Work. The Settling Group has commenced the Work as contemplated by the 106 Order.

On April 7, 1989, Mr. John A. Rego, a representative for the Settling Group, received a letter from nine companies (the "Upper Brook Coalition") of which Sherwin-Williams Company is a member. Each of the nine companies has been identified as a potentially responsible party by the U.S. EPA and each is a recipient of the 106

Order. As we understand, the purpose of your letter was to present two proposals to the Settling Group as a means of resolving the liability of members of the Upper Brook Coalition to the Federal Government under the U.S. EPA's 106 Order. The purpose of this letter is to respond to your demand that the Settling Group accept or reject your proposals prior to your 6:00 p.m. E.S.T, April 14, 1989, deadline.

The two alternative proposals submitted to the Settling Group by the Upper Brook Coalition companies are not appropriate under the circumstances and do not meet the requirements of the U.S. EPA's 106 Order. Neither proposal demonstrates the Upper Brook Coalition companies' willingness to conduct or finance the entire Work required by the 106 Order. As we understand, proposal A is essentially a proposal to "cash out" the liability of the nine PRP companies for One Million Dollars. The amount of this proposed cash contribution is grossly inadequate in light of the facts. While we will not detail here the information we previously conveyed in our meetings, suffice it to say by way of summary that the proposed figure represents only about 18% of the 5.5 million dollar cost of the Work, as estimated by the U.S. EPA. That percentage is unacceptable per se, especially considering that the offer comes from nine potentially responsible parties who account for a substantially larger share of the liability for the site. Proposal A is also unacceptable because the nine companies seek the benefits of settlement and performance of the Work without a share of ongoing burdens like that which each undersigned company has assumed.

Proposal B suggested by the Upper Brook Coalition companies is also inappropriate and impractical. The 106 Order requires that work plans for discrete portions of the Work be submitted to the U.S. EPA for approval no later than May 6, 1989. Our consultant, Woodward Clyde, is preparing the necessary submission. Proposal B indicates no practical ability to integrate your proposed limited work in these work plans.

Moreover, it would be inappropriate to segment the Brook along the lines suggested in Proposal B. The pollutants and contaminants contributed by the Upper Brook Coalition companies no longer reside merely in the upper regions of the Brook. Under generally accepted principles of stream mechanics, these pollutants and contaminants have been dispersed downstream through all of the lower regions of the Brook and form an undistinguishable part of lower

brook sediments which must be cleaned up. Restricting the responsibility of the Upper Brook Coalition companies to the upper regions of Fields Brook would be unsupported by scientific fact and would be inequitable to all potentially responsible parties on the Brook.

The Settling Group reiterates its invitation to the Upper Brook Coalition companies to join the Settling Group to resolve their liability under the U.S. EPA's 106 Order and avoid the civil penalties and treble damages contemplated by CERCLA for noncompliance. The Settling Group has developed a Fields Brook Cost Allocation Method which allocates cost among the Fields Brook potentially responsible parties. Each member of the Settling Group has executed a legally binding Allocation Agreement which implements the cost allocation method. In addition, the U.S. Department of Justice attorneys representing the Federal Defense Plant Corporation have agreed in writing to recommend that the Federal Government accept the Settling Companies' Allocation Method and to recommend further that the Federal Government contribute its allocated share to fund the work addressed in the 106 Order as well as the work on the final remedial action for the Fields Brook Sediment Operable Unit.

Even though representatives of the Settling Companies have met with representatives of eight of the nine Upper Brook Coalition companies (and offered to meet with the ninth) to explain the Settling Companies' Allocation Agreement, misconceptions concerning that agreement persist. U.S. EPA apparently has been told that joining the Allocation Agreement would obligate a company to contribute millions of dollars toward the final remedial action at Fields Brook, with no opportunity to dispute its allocated share of settlement costs. This simply is incorrect. First, under the terms of the Allocation Agreement, "Each party retains at all times the right to accept or reject any proposed agreement or settlement offered by the State or Federal government, or by any other Potentially Responsible party, or by any other potential claimant or plaintiff." Second, the Allocation Agreement fixes shares only among those parties who "elect" to participate in the settlement. Thus, a company may join the Allocation Agreement without obligating itself to pay its allocated share of a settlement addressing the remedial action. Alternatively, Sherwin-Williams Company can resolve its liability to the Government under the 106 Order by executing the Allocation Agreement and by joining the Settling Companies' separate

settlement agreement to fund the work performed pursuant to the 106 Order.

A second misconception is that other Fields Brook PRPs were purposefully excluded from participation in developing the allocation methodology, presumably so that the Settling Companies could allocate disproportionately small shares to themselves. This is equally untrue. The allocation methodology represents a framework for settlement which was hammered out over several years of heated negotiations among companies with divergent positions concerning the nature of substances allegedly contributed, years of ownership, volume of production, and number of plants. While none of the Settling Companies is pleased with its allocated percentage, each has concluded that an element of compromise is essential to achieve the consensus necessary for a group settlement at Fields Brook. Indeed, the federal government, on behalf of the Defense Plant Corporation, stands willing to accept the single largest percentage allocated under the methodology. Moreover, the signatories to the Allocation Agreement retain the right to mutually revise the allocation format.

Over the preceding years during which the Settling Companies have been negotiating both among themselves and with the State and Federal governments, the companies which now comprise the Upper Brook Coalition received repeated invitations to join the process and actively participate in shaping a settlement at Fields Brook. No willing participant was turned away from the bargaining table. However, a number of companies elected to remain silent and allowed the process to proceed with no personal investment of time or resources. Now, after years of negotiation and with a unilateral 106 Order in hand, there are protests from some companies that they have been "shut out" of the process and are being coerced to accept unreasonable terms. The record in this matter will not support either assertion.

Sherwin-Williams Company, as well as the other Upper Brook Coalition companies, has been invited previously to join the Settling Group in resolving the 106 Order. Under the Allocation Agreement, Sherwin-Williams Company's funding obligation for the estimated cost of the Work under the 106 Order (estimated by the U.S. EPA to be 5.5 Million) would be approximately $372,121.00 if all of the Upper Brook Coalition companies join the Settling Group.

Representatives of the Settling Group would be pleased to discuss Sherwin-Williams Company's concerns at your convenience. If you would like to discuss further the issue of Sherwin-Williams Company's participation as a member of the Settling Group please contact any of the undersigned representatives of the Settling Group. Upon your review, we believe that participating with the Settling Group under the 106 Order would be vastly superior to Sherwin-Williams Company's potential joint and several liability under CERCLA and the prospect of $25,000 per day civil penalties and treble damages which may be imposed on those PRP's who do not obey a 106 Order.

Sincerely,

WWF (By DEN)

William W. Falsgraf, Esq.
for
RMI Company

RAE (By DEN)

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for
Detrex Corporation

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for
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cc: Mr. Basil G. Constantelos
Mr. Allen J. Wojtas, (Via Telecopy)